



STATE OF NEW YORK

**UNEMPLOYMENT INSURANCE APPEAL BOARD**

PO Box 15126

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**DECISION OF THE BOARD**

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Mailed and Filed: AUGUST 09, 2022

IN THE MATTER OF:

Appeal Board No. 622514

PRESENT: MARILYN P. O'MARA, MEMBER

In Appeal Board Nos. 622513 and 622514, the employer appeals from the decisions of the Administrative Law Judge filed March 18, 2022, which overruled the initial determinations disqualifying the claimant from receiving benefits, effective September 25, 2021, on the basis that the claimant lost employment through misconduct in connection with that employment and holding that the wages paid to the claimant by prior to September 25, 2021 cannot be used toward the establishment of a claim for benefits; and in the alternative, disqualifying the claimant from receiving benefits, effective September 25, 2021, on the basis that the claimant voluntarily separated from employment without good cause.

At the combined telephone conference hearing before the Administrative Law Judge, all parties were accorded a full opportunity to be heard and testimony was taken. There were appearances by the claimant and on behalf of the employer.

Based on the record and testimony in this case, the Board makes the following

**FINDINGS OF FACT:** The claimant was employed part time as an assistant store manager by the employer retailer in the health and wellness industry, beginning in January 2019. In September 2021, the employer's Chief Executive Officer decided that a COVID-19 vaccination mandate was an important policy to have in place for a business in the health and wellness industry.

By email dated September 3, 2021, the employer informed its employees that to remain employed beyond September 24, each team member was required to provide

proof of COVID-19 vaccination by September 22, 2021, or request an exemption for medical or religious reasons. The email provided specifics regarding what was to be submitted if an employee requested an exemption from the vaccination policy; specifically, an application for medical exemption was to be supported by a doctor's note; and an application for a religious exemption was to be accompanied by two of the following: a statement or explanation from the employee of her religious beliefs; written religious materials describing the religious belief and practice behind the request; written statements or other documents from spiritual leaders, teachers, or practitioners. The policy provided further that if an exemption request was granted, the vaccine-exempt employee would be required to undergo weekly testing for COVID-19.

When the Human Resources manager had not heard from the claimant after the September 3 email, she followed up by email asking the claimant whether she intended to provide proof of vaccination or apply for an exemption. The claimant responded on September 11 that she wanted to have a conversation with the HR manager, and the two spoke by telephone that week. The claimant explained to the HR manager that because of her family life history and her own personal beliefs, she did not intend to get vaccinated. She also said that she was not going to apply for a religious or medical exemption because she did not feel that she qualified to receive either of them.

The claimant's decision not to get vaccinated is not based in religion and is "not a medical thing;" it is her way of life which she does not want to change. In addition, even if the claimant requested and was granted a vaccination exemption on any grounds, she did not wish to be tested weekly because she has a deviated septum, and would not consent to have a probe inserted in her nose by a stranger every week. The claimant saw this testing as invasive. The claimant did not consider asking a doctor for a medical note excusing her from testing, because she did not see doctors, and any doctor she sought out would not know her personal philosophy.

On September 20, the HR manager reached out to the claimant again, indicating that she had not received a request for an exemption, and asking the claimant how she wanted to proceed. The claimant responded that because she would not be exempt from weekly testing, she did not even want to ask for a vaccination exemption. When the claimant had not complied with the employer's policy requiring all employees to receive a COVID-19 vaccination by September 22, 2021, and had not been approved for an exemption from complying with the employer's policy, having never requested such an exemption, the claimant was

taken off the schedule on September 24, 2021, and her employment ended.

OPINION: The credible evidence establishes that the claimant's employment ended on September 24, 2021 when she chose to be separated from employment rather than receive a COVID-19 vaccination as mandated by the employer's known policy. The evidence also establishes that although the employer's policy provided for an employee to request a vaccination exemption on medical or religious grounds, the claimant chose not to make such a request, although she knew or should have known that she would not remain employed if she did not adhere to the employer's policy. The claimant's decision not to comply with the employer's policy regarding

mandatory COVID-19 vaccination constitutes a voluntary separation from employment for unemployment insurance purposes.

The evidence establishes that when the employer informed its employees of its policy requiring all employees to receive, and show proof of receipt of, the COVID-19 vaccination, the employer also provided information about how to apply for religious and medical exemptions from receiving the vaccination. The claimant did not apply for either a religious or medical exemption from complying with the employer's mandate. In fact, the claimant maintains that her decision not to get vaccinated is grounded neither in medicine, nor in religion, but is a personal philosophy based upon her life experiences. The claimant's personal beliefs do not exempt her from complying with the employer's reasonable policy mandating COVID-19 vaccination or exemption and weekly testing.

We are not persuaded by the claimant's contention that she did not apply for an exemption because she knew the employer would not excuse her from weekly testing. We note that since the claimant has acknowledged that she does not see doctors and does not seek the counsel of a minister, and that her refusal to get vaccinated was not on religious or medical grounds, she was unable to provide the required documentation and information need to support her application for an exemption. Further, a conclusion regarding what the employer would have done regarding testing had the claimant been approved for a vaccination exemption is speculative, because the claimant did not in the first instance seek exemption.

We find that the employer's vaccine mandate policy, implemented during a pandemic, to protect the health and safety of its employees, was reasonable

given the circumstances of the ongoing pandemic. Significantly, the claimant could have preserved her employment by complying with the employer's mandate. We find that the claimant's failure to do so was a voluntary act that brought about her separation from employment. We find further that the claimant has failed to establish a compelling reason, for unemployment insurance purposes, for her noncompliance with the employer's reasonable directive. Thus, we find that the claimant voluntarily separated from her employment without good cause under the Labor Law. Accordingly, we conclude that the claimant was separated from employment under disqualifying circumstances. As the claimant's separation was voluntary, there is no need to rule on the determination of misconduct.

DECISION: In Appeal Board Nos. 622513 and 622514, the decisions of the Administrative Law Judge are reversed.

In Appeal Board No. 622514 the initial determination disqualifying the claimant from receiving benefits, effective September 25, 2021, on the basis that the claimant voluntarily separated from employment without good cause, is sustained.

In Appeal Board No. 622513, in light of our decision in Appeal Board No. 622514, the initial determination disqualifying the claimant from receiving benefits, effective September 25, 2021, on the basis that the claimant lost employment through misconduct in connection with that employment and holding that the wages paid to the claimant by prior to September 25, 2021 cannot be used toward the establishment of a claim for benefits, is rendered academic.

The claimant is denied benefits with respect to the issues decided herein.

MARILYN P. O'MARA, MEMBER